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Supreme Court of the United States.

OCTOBER TERM, 1900.

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THE UNITED STATES,
Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, GEORGE LOOMIS ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR APPELLEES.

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Statement.

This suit was originally brought by the United States to quiet its title to certain lands claimed by the Southern Pacific Railroad Com-

pany to be within the limits of its Branch Line Grant, under Section 23 of the Texas Pacific Act (16 U. S. Stat., 573), and has already been before this court in 168 U. S., 1, where it was decided that all the questions raised therein between the United States and the Southern Pacific Railroad Company had been theretofore decided adversely to the Company in the prior cases of the United States vs. Southern Pacific Railroad, 146 U. S., 570, and United States vs. Colton Marble and Lime Co. and United States vs. Southern Pacific Railroad, 146 U. S., 615.

By an amended bill the complainant made defendants in the cause the individuals who had purchased or had contracted to purchase from the Southern Pacific Railroad a part of the lands involved in this suit (Record, p. 103), and at the close of its opinion this Court said at page 65 (168 U. S., 1, 65) that, as the bill was brought not only to quiet the title of the United States to the lands claimed by the Railroad Company, but to those claimed by individual defendants by purchase from or contract with said company, the Circuit Court should have determined by its final decree the rights of such individual defendants under the Act of Congress approved

March 3, 1887 (24 U. S. Stat., 556), instead of providing that the final decree entered by it should not affect the rights which such individual defendants had in the land under and by reason of said Act of Congress. This Court thereupon affirmed the decree below as to such individual defendants, " subject, however, to the right of the government to proceed in the Circuit Court to a final decree as to those defendants." The decision of this Court upon this question at p. 65 was as follows:

> " One of the objects of this suit was to obtain a decree quieting the title of the United States, not only to the lands claimed by the Southern Pacific Railroad Company, but to those claimed by numerous individual defendants by purchase from or contract with that company. The decree which was passed declares that it is not to 'affect any right which the defendants, or any of them, other than the Southern Pacific Railroad Company, now have or may hereafter acquire in, to or respecting any of the lands hereinbefore described, in virtue of the act of Congress entitled 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes', approved March 3, 1887'. Instead of leaving undetermined,

> the matters in dispute between the United States and the defendants other than the Southern Pacific Railroad Company the Circuit Court should have determined, by its final decree, what rights those defendants have by virtue of the above act of March 3, 1887, 24 Stat. 556, c. 376, in the lands or any of them, now in dispute and claimed by the United States. The effect of the decree is to leave undetermined the question whether the defendants who claim under the Southern Pacific Railroad Company are protected by that or any other act of Congress. The Government was entitled to a decree quieting its title to all the lands described in its pleadings, except those, if any, that are protected, in the hands of claimants, by acts of Congress. United States v. Winona & St. Peter Railroad, 165 U. S. 463; Winona & St. Peter Railroad v. United States, 165 U. S. 483. But as the Government has not appealed, the decree cannot be reversed for the error of the Circuit Court in not finally disposing of the issues between the United States and the individual defendants who claim under the Southern Pacific Railroad Company."

Thereupon, and immediately after the entering in the Circuit Court an order upon the mandate of this Court, a motion was made in said Circuit Court in behalf of the United States

for a further decree in conformity with the mandate of this Court, which required "that such proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding" (Record, p. 18).

The motion was argued before Judge Ross, the United States Circuit Judge for the Southern District of California, and a further decree was entered, in accordance with the views expressed by him, to the effect that all the individual defendants in this suit, except such of them as had failed to prove their citizenship or intention to acquire citizenship, should be confirmed in their purchases of land from the Southern Pacific Railroad Company under the provisions of the Adjustment Act, approved March 3, 1887 (24 U. S. Stat., 556), and the subsequent act, approved March 2, 1896 (29 U. S. Stat., 42).

The lands purchased from the Southern Pacific Railroad Company by the individual defendants is of two kinds—viz.: lands for which patents have been issued to the Southern Pacific Railroad Company by the United States, and unpatented lands.

The first twelve subdivisions of said further

decree relate to the unpatented lands, which amount to 43,315.67 acres, and the title to which the decree adjudges that certain of the individual defendants are entitled to purchase from the United States under the Act of Congress of March 3, 1887 (Record, p. 48 *et seq.*).

The remaining twenty-one subdivisions of said decree relate to lands patented by the United States to the Southern Pacific Railroad Company, which amount to 9,284.39 acres, and the title to which, under the Act of March 2, 1896, in the remaining individual defendants is confirmed by said decree (Record, p. 48, *et seq.*).

From said further decree, entered upon the 5th day of August, 1898, an appeal was taken by the Government to the United States Circuit Court of Appeals for the Ninth Circuit, which Court on October 9, 1899, affirmed the decree (Record, p. 673).

From the decree of the said Circuit Court of Appeals, affirming the further decree entered below in accordance with the mandate of this Court, this appeal has been taken by the United States.

POINT I.

The individual defendants in this case were bona fide purchasers from the Railroad Company within the meaning of the Acts of Congress of March 3, 1887, and of March 2, 1896.

By Section 4 of the Act of Congress approved March 3, 1887, and entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes" (printed in full in appendix, p. 1.), it was provided that any purchaser in good faith, who was a citizen of the United States, or had declared his intention to become such, from a railroad company of land, which had been erroneously certified or patented to it, was entitled to the land so purchased and to a patent from the United States therefor, and that the United States should look to the Railroad Company which disposed of the land for an amount equal to the Government price of similar lands.

By the fifth section of the same act it was enacted that when any railroad company shall

have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, land not conveyed to or for the use of such company, it should be lawful for the *bona fide* purchaser to make payment to the United States for such land at the ordinary Government price for like lands, and that thereupon patents should issue therefor.

Subsequently, and on February 12, 1896, an act was passed amending Section 4 of the Adjustment Act of 1887 (Appendix, p. v.), which is important here, in that it recognized the case of a purchase in which only a portion of the purchase price had been paid, and provided that in such a case, where the amount paid to the railroad by the purchaser was less than the Government price, the purchaser was only required to pay the difference between what he had paid the railroad and the Government price, and that the amount demanded in such a case by the United States from the railroad should be the amount paid to it by such purchaser.

The next legislation upon the subject was the Act of Congress approved March 2, 1896, (Appendix, p. vi.), which provided in its second

section that if any person (whether citizen or foreigner) was a *bona fide* purchaser of lands erroneously patented or certified to a railroad company, his title to such lands should stand confirmed, and the Government should recover from the Railroad Company the value of the land, which in no case should be more than the minimum Government price thereof.

It is important to notice how this legislation just referred to became more and more favorable to the *bona fide* purchaser. By the first act he was required to be a citizen of the United States. By the third act the benefit of this legislation was extended to a foreigner as well as a citizen, making the entire test of the right to the benefit of this law the good faith of the purchaser. By the first act the purchaser was required to make proof of the purchase of the land, and then a patent would be issued to him therefor. By the third act the title of the purchaser was at once confirmed. We call attention to this merely to show that the tendency of the Government was to broaden and not to narrow its policy and to confirm the title of any purchaser from a railroad of its land, provided only that such purchase was made in good faith.

These laws have all been before this Court for construction, and it was held in the two Winona cases (165 U. S., 463, and 165 U. S., 483) that the *bona fides* referred to in the statutes was not the same as the *bona fides* of the common law, but was to be given a broader construction and held to mean any " honest transaction between a purchaser and a railroad company."

The present case would seem to fall within and be governed by the decisions in the Winona cases. The only question presented here is whether the individual defendants are *bona fide* purchasers from the Railroad Company of the land involved herein, and there is nothing in the facts of this case to distinguish it from the Winona case or to constitute any reason why the broad, general policy of the Government towards settlers of public land should not apply to the individuals in this case as well as to any other purchaser from a railroad company of lands which had been forfeited by the Government and become a part of the public lands.

So long ago as the case of Clements vs. Warren, 24 How., 394, 397, it was said that

> " The policy of the federal government in favor of settlers upon public lands has

> been liberal. It recognizes their superior equity to become the purchasers of a limited extent of land, comprehending their improvements, over that of any other person."

Again, in the late case of Tarpey vs. Madsen, 178 U. S., 215, 220, this Court again recognized this principle, and said :

> " In this respect we must notice the oft-repeated declaration of this court that the law deals tenderly with one who, in good faith, goes upon the public lands with a view of making a home thereon (Ard vs. Brandon, 156 U. S., 537, 543; Northern Pacific Railroad vs. Amacker, 175 U. S., 564, 567). With this declaration, in all its fulness, we heartily concur."

The whole theory of the Winona case was that no narrow construction was to be given to the words "*bona fide* purchaser," as such a purchaser, within the strict meaning of the term, would have been protected without any special act of Congress, and that the question was to be examined broadly and having regard to all the attendant circumstances of the case. In other words, Congress, when it passed the acts in question, had in mind the protracted delay of the Land Department of the Government in deter-

mining the various questions of title arising under the grants in aid of the Pacific roads and the long litigation which was almost certain to occur in the Courts before those questions of title were ultimately disposed of, and decided that it was far wiser not to delay the settlement and improvement of the vast tract of country included within these land grants, but to provide that any purchaser from the Railroad, so long as he was an honest purchaser, should be protected in his title, even if it should ultimately be decided that the United States was legally entitled to the land. That is to say, this Court has substantially held in the Winona case that the United States, by the Adjustment Acts, decided to recognize the fact that the purchasers from the railroads held a certain equitable position as to the lands bought by them; that such equity was upon a broader basis than any rights between individuals, and that it was nothing strange or unusual in the Government to say that, as to its own lands, it would recognize certain equitable rights therein, such recognition growing out of the general policy of the Government to settle the country as speedily as possible.

Inasmuch as the Federal Government has

always encouraged the taking up of its vacant land, and as inducements have invariably been put forward to persuade settlers to purchase such land, the view of this Court was that these adjustment acts were but another step in such policy, and were passed simply to bring about an immediate settlement of these particular railroad grant lands, which had again become part of the public domain, and leave to the Government to deal with the railroads as to the question of payment therefor.

The decision of Mr. Justice BREWER in the Winona case (165 U. S.), at page 478, is as follows:

> "We are unable to agree with this contention of counsel, for several reasons: In the first place, the situation as it was known to exist makes against any such narrow construction. While instances of such fraudulent conduct on the part of the State to which the lands were certified, or the company to which the lands were patented, might exist, yet in the nature of things they would be few and hardly worth the special notice of Congress, while on the other hand the fact that there had been a difference between the land department and the courts, one construction obtaining in the former prior to the decisions by the latter, and the further fact that by this difference of construction many tracts

had been erroneously certified or patented, must have been well known to Congress, and naturally therefore a subject for its legislation. Further, there was no need of any legislation to protect a '*bona fide* purchaser'. This had been settled by repeated decisions of this court. United States v. Burlington & Missouri River Railroad Company, 98 U. S. 334, 342; Colorado Coal Company v. United States, 123 U. S. 307, 313—reaffirmed in United States v. California &c. Land Company, 148 U. S. 31. 41. For in each of those cases it was decided that, although a patent was fraudulently and wrongfully obtained from the Government, if the land conveyed was within the jurisdiction of the land department the title of a *bona fide* purchaser from the patentee could not be disturbed by the Government, so that this provision was absolutely unnecessary if that which is now claimed by counsel for the Government is all that was intended by Congress. We do not mean to assert that because legislation to cover such a contingency was unnecessary, therefore the language used by Congress necessarily implies something other and different, because of course it may have been that Congress intended nothing but a simple declaration of the law as it was known to exist. At the same time the fact, that under one construction it was needless, raises a presumption that something more was intended, and that Congress had in

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view the protection of other parties than were already protected by general law.

" But we need not rest on these inferences and presumptions. Other provisions of the acts of 1887 and 1896 make clear the intent of Congress. Section 3 of the act of 1887 provides that if the homestead or preemption entry of any *bona fide* settler has been erroneously cancelled on account of any railroad grant it may be reinstated, provided he has not located another claim or made an entry in lieu of the one so cancelled, and also did not voluntarily abandon such entry. By this section Congress provided for a reinstating of the title of one deprived thereof by an erroneous ruling of the land department, but, at the same time, limited the right of reinstating to cases in which the original entryman had not voluntarily abandoned his entry, or had not since that time made a new entry. In other words, it was limiting the restoration of the title of the original entryman to cases in which he had a continuing and present equitable right to recognition. As to all other cases, Congress reserved the determination of the equities between the Government, the railroad company and purchasers from the latter, and in subsequent sections it made provision for the adjustment of such equities.

" Section 4 of the same act, expressly referring to all other lands, erroneously certified or patented to any railroad company,

provides that citizens who had purchased such lands in good faith should be entitled to the lands so purchased and to patents therefor issuing directly from the United States, and that the only remedy of the Government should be an action against the railroad company for the Government price of similar lands. It will be observed that this protection is not granted to simply *bona fide* purchasers (using that term in the technical sense), but to those who have one of the elements declared to be essential to a *bona fide* purchaser—to wit, good faith. It matters not what constructive notice may be chargeable to such a purchaser, if, in actual ignorance of any defect in the railroad company's title, and in reliance upon the action of the Government in the apparent transfer of title by certification or patent, he has made an honest purchase of the lands. The plain intent of this section is to secure him the lands, and to reinforce his defective title by a direct patent from the United States, and to leave to the Government a simple claim for money against the railroad company. It will be observed that the technical term '*bona fide* purchaser' is not found in this section, and while it is provided that a mortgage or pledge shall not be considered a sale so as to entitle the mortgagee or pledgee to the benefit of the act, it does secure to every one, who in good faith has made an absolute purchase from a

railroad company, protection to his title irrespective of any errors or mistakes in the certification or patent.

"Section 5 of the same act applies to cases in which no certification or patent has issued, and yet the lands sold by the railroad company are the numbered sections prescribed in its grant and coterminous with the constructed portions of its road, and it is there provided that where the lands so sold by the company 'are for any reason excepted from the operation of the grant to said company,' the purchaser may obtain title directly from the Government by paying to it the ordinary Government price of such lands. It is true the term used here is '*bona fide* purchaser,' but it is a *bona fide* purchaser from the company, and the description given of the lands as not conveyed and 'for any reason excepted from the operation of the grant' indicates that the fact of notice of defect of title was not to be considered fatal to the right. Congress attempted to protect an honest transaction between a purchaser and a railroad company, even in the absence of a certification or patent. These being the provisions of the act of 1887, the act of 1896, confirming the right and title of a *bona fide* purchaser, and providing that the patent to his lands should not be vacated or annulled, must be held to include one who, if not in the fullest sense a '*bona fide* purchaser,' has, nevertheless, purchased in good faith from the railroad company.

"We have been referred in the arguments of this and other cases to the debates in Congress, and to the reports of the committees of the two houses to whom the bills were referred as confirmatory of the conclusions we have reached, but it is unnecessary to consider any of the evidence derived from these sources, if, indeed, it is open to consideration, for the language of the two acts is clear, and fully discloses the intent of Congress. Our conclusion is that these acts operate to confirm the title to every purchaser from a railroad company of lands certified or patented to or for its benefit, notwithstanding any mere errors or irregularities in the proceedings of the land department, and notwithstanding the fact that the lands so certified or patented were, by the true construction of the land grants, although within the limits of the grants, excepted from their operation, providing that he purchased in good faith, paid value for the lands, and providing, also, that the lands were public lands in the statutory sense of the term, *and free from individual or other claims.*"

In the last words of the quotation just cited from the first of the Winona cases (165 U. S., 463) will be found the keynote of the whole decision—viz.: the Government has a right to waive its own technical rights to its own land so long as it

does not thereby affect the rights of third parties, and this view of the decision is emphasized by the second Winona case (165 U. S., 483), where the claim of the purchaser from the Railroad Company was disallowed for the reason that such claim interfered with the rights of a third person who had been in possession of the land then in question for twenty years.

In the letter from Attorney-General Garland to the Secretary of the Interior, dated November 17, 1887 (6 L. D., 272), it was said, at page 275:

> "The fifth section is a part of the same scheme as the residue of the act. The wrong done the settler who in good faith shall have purchased lands of the railroad company, to which the company by the adjustment is shown to have no legal right, is identical, whether the purchases are in the indemnity or primary limits. The hardship he may be subjected to by loss of his land, improvements and labor is the same in either case. The whole scope of the law from the second to the sixth section, inclusive, is remedial. *Its intent is to relieve from loss settlers and bona fide purchasers, who, through the erroneous or wrongful disposition of the lands in the grants, by the officers of the government or by the railroads have lost their rights or acquired equities, which in justice should be recognized.*

> * * * It is not required that the sale by the railroad company shall have been made on its part in good faith, *but only that the purchaser shall have bought in good faith. That it was sold under a claim of the grant to another in good faith is the ground of his equity.*"

In Sethman vs. Clise, XVII., L. D., 307, 311, it was said by Secretary Smith as follows:

> "Congress contemplated the immediate adjustment of these grants, and while willing to afford means for recovering from said companies' lands to which they were not actually entitled, or lands not earned by them, but claimed by them under their respective grants, it was unwilling to destroy the equities of said companies' grantees, or those whose title was held through them; hence the fifth section sought to protect such transferees."

In Osborn vs. Knight, XXIII., L. D., 216, 221, it was said:

> "Under the repeated rulings of the Department, a settlement claim initiated after the passage of the Act of March 3, 1887, cannot affect the right of the purchaser from the company to make purchase from the United States under the provisions contained in the body of section five of said act. I can see no reason for changing this holding. * * *

"The fifth section of the Act of March 3, 1887, was remedial in its nature, and should be liberally construed to embrace the remedy, viz.: the protection of those who had in good faith bought lands supposed to have passed under a railroad land grant which had, for any reason, been excepted therefrom."

The Unpatented Lands Covered by the Further Decree.

The first twelve sections of the final and further decree relate to some 43,315.67 acres of unpatented land purchased by certain of the individual defendants from the Southern Pacific Railroad Company, and the claims of such individual defendants thereto are controlled by the 5th Section of the Act of Congress of March 3, 1887 (Appendix, p. III.). A table showing the contracts and deeds for these lands, and giving the references to the portions of the record relating to them, will be found at page VIII. of the Appendix.

An examination of this section will disclose that the Government, by permitting the purchaser from the Railroad Company to hold this unpatented land which he has purchased, is not granting to him any extraordinary favor, as the condition of his obtaining a patent is that he

shall pay to the Government the regular market price therefor. In other words, under this section, the Government gets full price for its land, and has simply said to the purchaser that so long as his keeping the land does not interfere with the rights of third persons, but only with the technical claims of the Government, he can continue to hold his land and obtain a patent therefor upon paying to the Government the regular price therefor. Instead of the Government losing by the transaction, it would seem to gain thereby, in view of the fact that it obtained at once a purchaser for its land.

There would seem to be no question as to the good faith of all the purchasers of the unpatented land. Judge ROSS said as this at page 41 of the record :

> " From the evidence in the case, it does not admit of doubt that the respective purchasers of the land now under consideration bought in good faith and in the expectation of receiving through the railroad company, title to the lands purchased. This is shown in part by the contracts and deeds introduced in evidence. That in many instances, only a part of the purchase money has been actually paid is, in my opinion, wholly immaterial."

The Act of February 1896 (Appendix, p. VI.) shows conclusively that want of good faith cannot be argued merely from a part payment of the purchase price of the land, for this statute expressly covers cases in which only a portion of the purchase money has been paid.

It is also to be noticed that Section 3 of the Act of March 2, 1896, speaks of "*bona fide* purchasers * * * by deed *or contract or otherwise* (Appendix, p. XII.);" thus expressly including persons who have bought under contract and paid only a portion of the purchase price.

Upon this point it was said by the Secretary of the Interior in Schneider vs. Linkswiller *et al.*, XXVI., L. D., 407, 409.

> "If the inquiry were confined to the question whether the contract exhibited in this case evidences such a sale as is contemplated by said Act, the matter might be disposed of more briefly, for the Department has, since the passage of said Act, passed upon many similar contracts, and uniformly and invariably treated them as showing a sale or purchase within the meaning of the Act. If the Department had held that such sale or purchase must be absolute, in the sense of a fully-consummated and completed one, in order to be protected, the operation

of the Act would have been very limited and circumscribed. It is a part of the history of the times, that the land-grant companies had sold much of the land within the limits of the grants to immigrants and others, and held out as inducements to such parties contracts giving long credits and requiring moderate annual payments. It was through this policy that vast bodies of land in the public-land States were disposed of to actual settlers and many communities established and built up. This was well known to Congress at the time of the passage of said Act, and it seems certain that such contracts, whether spoken of as sales or purchases; whether fully performed or only partially performed, constitute a part of the subject with which Congress was dealing, and the rights of the so-called purchaser thereunder are within the protection of the statute, if acquired in good faith. If there be any doubt about the correctness of this view of the purpose and intent of the Act of 1887, it is removed by a perusal of the amendment thereto on February 12, 1896 (29 Stat., 6), wherein Congress expressly recognizes partly performed contracts of purchase, like that of Schneider, as constituting a purchase within the meaning of the law.

"It is therefore held that there was a 'purchase' of the tract in question within the meaning of the Act of March 3, 1887".

In Sethman vs. Clise, XVII. L. D. 307, 312, it was said:

> "The Act directed the manner of making adjustments, and it was the evident intention of Congress, as expressed in the 5th section of the Act that when in the adjustment of these grants it was ascertained that land had been bought from the railroad companies for which they could convey no good title, such buyers or their transferees, if *bona fide*, should be allowed to purchase the tracts claimed by them. And it can make no difference, I think, whether a transferee, otherwise entitled to purchase, bought the land before or after the day of the approval of the Act, if it was originially purchased in good faith from any said company."

In the case of John H. Barton *et al.*, XXVI., L. D. 489, 493, the same principle was again asserted.

> "It was a matter of common knowledge at the time of the passage of this Act that the lands claimed by railroads under their grants were to a great extent held and occupied by those who in good faith had entered into contracts providing for the purchase of such lands and payment therefor in five, ten or some other number of annual installments, and conferring upon the purchaser the right to occupy, cultivate and improve the lands from the date of the con-

tract. For many years this had been the prevailing method of disposing of railroad lands, both patented and unpatented.

"In common understanding the word purchaser' includes those who hold lands under such contracts, and the history of this legislation seems to make it quite clear that the word was so used in the act of March 2, 1896. The reasons for protecting those who have obtained deeds, but who have not made full payment, or for protecting those who have made full payment but who have not obtained deeds, apply with equal force to those who, while they have neither made full payment nor obtained deeds, have nevertheless made binding contracts to make complete payment and hold the enforceable obligations of the railroads to execute and deliver deeds and who, on the faith thereof, may have made valuable and permanent improvements upon the land. This view of the language employed insures the equal protection and benefit of the statute to those who from necessity purchased upon long-time contracts providing for small annual payments, and who expected, by the cultivation and use of the land, to obtain the means wherwith to make ultimate payment therefor.

"The Department is of the opinion that one who, under a subsisting contract of the character here described, in good faith, holds lands so erroneously patented or certified, is

a *bona fide* purchaser within the meaning of the Act of March 2, 1896, whose right and title are thereby confirmed. The fact that the time for making some deferred payment has not arrived, or that with the indulgence of the railroad some deferred payment may have been passed, does not alter his status as a purchaser, if, in good faith, he claims the land under a contract which has not been surrendered or otherwise avoided."

In the opinion below of the Circuit Court of Appeals it was said at page 672 of the record:

"With respect to purchasers of land from the railroad company where no patents have been issued by the United States, the Supreme Court in the Winona case indicates that the same broad construction is to be given to the statute to protect honest transactions between the purchasers and the railroad company. The policy pursued by all the land-grant railroad companies contemplated the settlement of the country by immigrants as the roads were being constructed, and to carry out this policy it was necessary for the railroad companies in many instances to furnish settlers seeking to purchase lands supposed to be railroad lands with some evidence of a right to title in a contract of sale, in advance of the transfer of the title by the United States to the railroad companies by patent. This policy and its practical operation has been

> known to the public, and has been frequently commented upon by the courts and the officers of the Land Department of the Government in determining the rights of settlers within the limits of the railroad grants. When, therefore, Congress passed the act of March 3, 1887, providing for the adjustment of land grants made by Congress to aid in the construction of railroads, it had this condition of affairs in view, and dealt with it upon the broad principle that the good faith of the parties in making such contracts should be controlling considerations in determining all questions in controversy."

There being no doubt as to the good faith of the purchasers of this land, there would seem to be no other ground upon which the counsel for the Government can attack the validity of the decree below unless it be the citizenship of the purchasers.

An examination of the record will show that the individual owners of the land at the time the suit was commenced are all citizens of the United States, and it has been held many times by the Department of the Interior, that it is unimportant whether the immediate transferee of the Railroad was a foreigner or not, so long as the owner at the time of the adjustment of the title to the lands was a citizen.

In the case of Sethman vs. Clise, XVII. L. D., 307, 310, Sethman purchased after the date of the Act of 1887, from an original purchaser who was not a citizen. The Secretary of the Interior said:

> "The question has been raised in this case as to whether or not the first purchasers from the company in 1884 were citizens of the United States" (p. 310) "or whether at that time they had declared their intention to become citizens. Sufficient evidence is not before me from which I can determine whether they were citizens or not, or whether their intentions on that subject had been declared. As seen heretofore, their qualifications are not important if the purchasers from them are qualified" (p. 311). * * "And it can make no difference, I think, whether a transferee, otherwise entitled to purchase, bought the land before or after the day of the approval of the Act" (p. 312).

In his instructions of August 30, 1890 (XI., L. D., 229, 230), Secretary Noble, construing the Adjustment Act of 1887, said:

> "The section in question (Sec. 5) was evidently intended by Congress for the benefit of citizens of the United States, or persons having declared their intention to become such, who in good faith shall have purchased lands within the limits of railroad grants and coterminus with constructed

> parts of the roads, with the *bona fide* belief that the company had title thereto. It can make no difference, in my judgment, whether the applicant is the immediate purchaser from the company, or a purchaser one or more degrees removed. If he is a *bona fide* purchaser of the land, and has the required qualifications as to citizenship, he is within the intendment of the statute, *and, if he be not the original purchaser from the Company, it is immaterial what the qualifications of his immediate grantor or the intervening purchasers may have been.* * * *
>
> " It was not in any sense the intention of Congress to confirm sales made by the Company, but rather to afford to citizens, or persons having declared their intention to become such, who were *bona fide* purchasers of the lands to which the Company had no title, a means of acquiring title from the Government, to the exclusion of settlers or purchasers under the general land laws."

The defect in the citizenship of any purchaser of the unpatented land will be urged (if pressed at all by the counsel for the Government) only as against the Atlantic & Pacific Fibre and Importing Company, a foreign corporation, which purchased a large tract of land from the Southern Pacific Railroad Company and paid the money therefor (Record, p. 315 *et seq.*). The

Fibre Company, however, sold this land to Jackson A. Graves (Record, p. 313 and 340), who bought the land in good faith and who is a citizen of the United States, and the Court below, following the decisions of the Department of the Interior, which we have just quoted, held that the citizenship of the Fibre Company, the original purchaser from the Railroad, was immaterial, and that Graves, being a *bona fide* purchaser from the Fibre Company, was entitled to the benefit of the fifth section of the Act of 1887.

The Patented Lands Covered by the Further Decree.

The last thirty-one subdivisions of the further and final decree relate to 9,384.39 acres of land erroneously patented to the Railroad Company, and purchased by certain of the individual defendants. A table giving references to the record relating to the contracts and deeds of this land will be found at page IX. of the Appendix.

The good faith, within the meaning of the adjustment acts as construed by this Court, of the purchasers from the Southern Pacific Railroad Company of this land has been found by both Courts below, and is practically undisputed by the

counsel for the Government, his only argument being that the construction put upon the words *bona fide* by this Court in the Winona cases is wrong.

As to the patented lands we are not met by any questions of citizenship, for the Act of March 2, 1896, extends to all persons, whether citizens or foreigners (Appendix, p. VI.), and we also find on looking at the second section of this act that the Government does not waive anything more than its technical rights any more than it did in the case of its unpatented lands, as, instead of throwing its lands upon the market, it obtains a purchaser therefor in the Railroad Company at the regular market price.

It may possibly be suggested that a purchase of land after the passage of the adjustment acts d d not fall within its provisions, but it has been held by the Interior Department that it does both as to patented and unpatented land.

In Neilsen vs. Central Pacific R. R. Co., XXVI. L. D., 252, a decision by Secretary Bliss, it was said, in the headnote :

> " In the exercise of the right to perfect title under said section [Section 5, Act of March 3, 1887], it is not material whether

the purchase from the company was made before or after the passage of the act, if made in good faith, believing the title to be good, and before the land was held to be excepted from the grant."

The rule heretofore referred to as applicable to the fifth section of the Act of March 3, 1887, has also been enforced in regard to the fourth section of said act, as appears in the case of Carlton Seaver *et al.*, XXIII. L. D., 108, where it was held that it was immaterial whether the purchase of the land was made before or after the passage of the Act of March 3, 1887. It was said, at page 109, as follows:

"It thus appears that the several sections of the act of March 3, 1887, are but different parts of the same scheme, namely, to secure from the railroads a relinquishment or reconveyance to the United States of lands theretofore erroneously certified or patented, and to relieve from loss settlers and *bona fide* purchasers, who, through the erroneous or wrongful disposition of the lands in the grants, by the officers of the Government, or by the railroads, have lost their rights or acquired equities, which in justice should be recognized.

"It has been shown that relief similar to that applied for in the case at bar has been

> granted under the fifth section of the act of March 3, 1887, to transferees; there seems to be no good reason why the same relief should not be granted to an original purchaser under the fourth section thereof."

It would therefore seem clear that all the patented lands involved herein were purchased from the railroad by bona fide purchasers within the meaning of the Adjustment Acts.

POINT II.

The further decree of the court below adjudging that the individual defendants were bona fide purchasers from the railroad company of the lands in question should be affirmed.

L. E. PAYSON,
MAXWELL EVARTS,
Of Counsel for the Appellees.

APPENDIX.

ACT OF CONGRESS OF MARCH 3, 1887.

(24 U. S. STAT., 556.)

An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Secretary of the Interior be, and is hereby, authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads and heretofore unadjusted.

SEC. 2. That if it shall appear, upon the completion of such adjustments respectfully, or sooner, that lands have been from any cause heretofore erroneously certified or patented by the United States, to or for the use or benefit of any company claiming by, through, or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so reconvey such lands to the United States within ninety days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney-General to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States

SEC. 3. That if, in the adjustment of said grants, it shall appear that the homestead or pre-emption entry of

any *bona fide* settler has been erroneously canceled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws. Provided, that he has not located another claim or made an entry in lieu of the one so erroneously canceled. And provided, also, that he did not voluntarily abandon said original entry. And provided further, that if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to *bona fide* purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to *bona fide* settlers residing thereon.

SEC. 4. That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased upon making proof of the fact of such purchase at the proper land office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants, respectively, shall have been adjusted; and patents of the United States shall issue therefor, and shall relate back to the date of the original certification or patenting, and the Secretary of the Interior, on behalf of the United States, shall demand payment from the company which has so disposed of such lands of an amount equal to the Government price of similar lands, and in case of neglect, or refusal of such company to make payment as hereafter specified, within ninety days after the demand shall have been made, the Attorney-General shall cause suits or suit to be brought against such company for the said amount; provided, that nothing in this act shall prevent any purchaser of

lands erroneously withdrawn, certified, or patented as aforesaid from recovering the purchase money therefor from the grantee company, less the amount paid to the United States, by such company as by this act required; and provided, that a mortgage or pledge of said lands by the company shall not be considered as a sale for the purpose of this act, nor shall this act be construed as a declaration of forfeiture of any portion of any land grant for conditions broken, or as authorizing an entry for the same, or as a waiver of any rights that the United States may have on account of any breach of said conditions.

SEC. 5. That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company; it shall be lawful for the *bona fide* purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to the said *bona fide* purchaser, his heirs or assigns: Provided, that all lands shall be excepted from the provisions of this section which at the date of such sales were in the *bona fide* occupation of adverse claimants under the pre-emption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said pre-emption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor: Provided Further: That this section shall not apply to land settled upon subsequent to the first day of December, eighteen hundred and eighty-two, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases.

SEC. 6. That where any such lands have been sold and conveyed, as the property of any railroad company, for the State and county taxes thereon, and the grant to such company has been thereafter forfeited, the purchaser thereof shall have the prior right, which shall continue for one year from the approval of this Act, and no longer, to purchase such lands from the United States at the Government price, and patents for such lands shall thereupon issue: Provided, that said lands were not, previous to or at the time of the taking effect of such grant, in the possession of or subject to the right of any actual settler.

SEC. 7. That no more lands shall be certified or conveyed to any State, or to any corporation or individual, for the benefit of either of the companies herein mentioned, where it shall appear to the Secretary of the Interior that such transfers may create an excess over the quantity of lands to which said State, corporation or individual would be rightfully entitled.

Approved March 3, 1887.

V

ACT OF CONGRESS, FEBRUARY 12, 1896.

(29 U. S. STAT., 6.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four of an act entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," approved March third, eighteen hundred and eighty-seven, be, and the same is hereby, amended by adding thereto the following proviso: "Provided, further, That where such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the Government price of similar lands, they shall be required, before the delivery of patent for their lands, to pay to the Government a sum equal to the difference between the portion of the purchase price so paid and the Government price, and in such case the amount demanded from the company shall be the amount paid to it by such purchaser."

Approved, February 12, 1896.

ACT OF CONGRESS OF MARCH 2, 1896.

(29 U. S. STAT., 42.)

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress, and amendments thereto, is extended accordingly as to the patents herein referred to. But no patent to any lands held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed: Provided, That no suit shall be brought or maintained, nor shall recovery be had for lands or the value thereof, that were certified or patented in lieu of other lands covered by a grant which were lost or relinquished by the grantee in consequence of the failure of the Government or its officers to withdraw the same from sale or entry.

SEC. 2. That if any person claiming to be a *bona fide* purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a *bona fide* purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee or the corporation, company, person, or association of persons, for whose benefit the certification was made, for the value of said land, which in no case shall be more than the minimum Government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the *bona fides* of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a *bona fide* purchaser, but

who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the court to be a *bona fide* purchaser, the court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons, for whose benefit the certification was made for the value of the land as hereinbefore provided. Any *bona fide* purchaser of lands patented or certified to a railroad company, and who is not made a party to such suit, and who has not submitted his claim to the Secretary of the Interior, may establish his right as such *bona fide* purchaser in any United States court having jurisdiction of the subject-matter, or at his option as prescribed in sections three and four of chapter three hundred and seventy-six of the acts of the second session of the Forty-ninth Congress.

SEC. 3. That if at any time, prior to the institution of suit by the Attorney-General to cancel any patent or certification of lands erroneously patented or certified, a claim or statement is presented to the Secretary of the Interior by or on behalf of any person or persons, corporation or corporations, claiming that such person or persons, corporation or corporations, is a *bona fide* purchaser or are *bona fide* purchasers of any patented or certified land by deed or contract, or otherwise, from or through the original patentee or corporation to which patent or certification was issued, no suit or action shall be brought to cancel or annul the patent or certification for said land until such claim i investigated in said Department of the Interior ; and if it shall appear that such person or corporation is a *bona fide* purchaser as aforesaid, or that such persons or corporations are such *bona fide* purchasers, then no such suit shall be instituted, and the title of such claimant or claimants shall stand confirmed ; but the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person or association of persons, for whose benefit the patent was issued or certification was made for the value of the land, as hereinbefore specified.

Approved March 2, 1896.

Reference to Contracts, Deeds, and proofs showing bona fide purchases under Act of March 3rd, 1887, of unpatented lands.

Decree.		Contract.			Deed.			Ref. to Trans.		Remarks.
Item.	Person.	No.	Date.	Tr.	No.	Date.	Tr.	Bona fides.	Citizenship.	
1	George Loomis	10077	25 Apr. '89	222				200	190	Purchased by Loomis in trust for Pac. Coast Oil Co. (Tr. 190, 220).
		10320	8 May '90	234						
		10321	" " "	240						
		10322	" " "	245						
		10323	" " "	250						
		10324	" " "	255						
		10325	" " "	260						
		10326	" " "	266						
		10327	" " "	271						
		10328	" " "	276						
		10329	" " "	281						
		10330	" " "	287						
		10331	" " "	292						
		10332	" " "	297						
		10333	" " "	303						
2	Pac. Coast Oil Co.				9416	3 Mar., '88	228	200	190	
3	Jackson A. Graves	4720	23 July, '85	321				313	308	These contracts were issued to the At. & Pac. Fibre & Imp. Co., a foreign Co. Assigned to Graves Jany. 27, '93 (Tr. 343).
		4721	" " "	327						
		4723	" " "	333						
4	Mary L. Gould	4726	25 July, '85	379				377·8	371 6.8	
5	M. W. Stimson	8861	22 Dec., '87	347				348-9	347	
		8862	" " "	348						
6	Chas. M. Stimson	8863	" " "	365				364	362	Assigned to McVay, July 15, '89 (Tr. 369).
7	Daniel D. Brunk	4724	24 July, '85	427				425-6	423	Assigned to Painter, Oct. 13, '86 (Tr. 431).
8	Stefano Cuneo	4487	30 Mar., '85	437				435-6	433	
9	G. Suraco	4488	" " "	445				443-4	442	
10	Wm. H. Carlson	4102	22 Nov., '84	456				452-3	450	Ass'd to Furnival, 19 Nov., '86 (Tr. 462).
		6009	1 Nov., '86	463				476	470	Ass'd to Furnival, 26 Nov., '90 (Tr. 468).
11	Thos. F. Mitchell	4452	18 Mar., '85	479				485	484	
12	Ramon Perea	5738	1 July, '86	486						

... bona fide purchases under Act of March 2nd, 1896, of patented lands.

12	Ramon Perea	5738	1 July, '86	486									485	484	

Reference to Contracts, Deeds, Patents and Proofs showing bona fide purchases under Act of March 2nd, 1896, of patented lands.

Decree.		Contract.			Deed.			Ref. to Trans.		Patents.			Remarks.
Item.	Person.	No.	Date.	Tr.	No.	Date.	Tr.	Bona fides.	Citizenship.	No.	Date.	Tr.	
13	Jackson A. Graves				4719	23 July, '85	315	313	308	1	Mch. 29, '76	644	Conveyed to Graves, Jany. 27, '93 (Tr. 343).
14	D. M. Sutherland	7875	28 July, '87	503				496–7	492	1	" " "	"	
					7873	19 July, '93	497	495	492	1	" " "	"	See Item 19, Stipulation (Tr. 7).
15	Clarence T. Cleve	5880	27 Aug., '86	7	5880	12 Aug., '90	513	509–10		1	" " "	"	See Item 20, Stipulation (Tr. 7).
16	Peter Hamilton Mrs. Thos. Allison	3057	14 Jany., '84	8	3057	18 Jany., '89	528	521–2		9	Jany. 9, '85	662	See Item 21, Stipulation (Tr. 8).
17	William Ferguson James Hamilton	3053	14 Jany., '84	8	3053	18 Jany., '89	542	535–6		9	" " "	"	See Item 22, Stipulation (Tr. 8).
18	Ira H. Bradshaw	5878	26 Aug., '86	8	5878	29 Sept., '87	553	549–50		1	Mch. 29, '76	644	See Item 23, Stipulation (Tr. 8).
19	Peter Cook M. L. Wicks Alexander Cook				3062	21 June, '87	632	625		9	Jany. 9, '85	662	Alexander Cook assigned to Peter Cook, 17 Nov., '87 (Tr. 634).
20	Mary L. Gould				4172	28 Jany., '90	386	378	376	6	Dec. 27, '83	657	No appeal as to remaining lands (Tr. 11).
21	Will D. Gould	7973	8 Aug., '87	403	7872	8 Aug., '72	407	378	371	2	April 4, '79	653	
								"	"	2	" " "	"	
22	James M. Hait				4168	7 May, '88	412	377–8	376–8	6	Dec. 27, '83	657	Conveyed to W. D. Gould, 15 Mch., '88 (Tr. 418, 420).
23	Richard Dillon John Kenealy				2839	2 Oct., '86	562	561	559	2	April 4, '79	653	
24	J. Garber McH. Pierce	9205	30 Jany., '88	9	9205	28 Jany., '90	578	576	574–7	1	Mch. 29, '76	644	See Item 25, Stipulation (Tr. 9).
25	Nathan Cole, Jr.	4687	24 June, '85	9	4687	7 Jany., '92	589	586–7	584	1	" " "	"	See Item 26, Stipulation (Tr. 9).
26	Jacob Harps	3863	14 Aug., '84	10	3863	7 Oct., '87	600	596–7	595	6	Dec. 27, '83	657	See Item 27, Stipulation (Tr. 10). Appeal waived (Tr. 11).
27													
28	Pablo Lopez				859	11 July, '87	608	608	606	2	April 4, '79	653	
29	Jessie M. Blanchard				2140	12 Mch., '87	617	616–17	614	2	" " "	"	
30	Richard Dillon				2817	2 Oct., '86	567	561	559	2	" " "	"	Stip. test. of Dillon same as Kenealy. Appeal waived (Tr. 11).
31													Appeal waived (Tr. 11).
32													Appeal waived (Tr. 11).
33													